

REMARKS/ARGUMENTS

Reconsideration is requested. Claims 1-46 are currently pending. Responsive to the Office Action of January 22, 2007, the Examiner's comments and the cited art have been noted and studied. For reasons to be set forth in detail below, it is respectfully submitted that the present application is in condition for allowance, and such action is requested.

Independent claims 1, 22, 23, 35, 37, 38, 40 and 46 have been amended for clarity and to recite that the "approachment" together of the first and second portions creates a target site bulge in the dermal tissue (see, for example, paragraph 0049, paragraph 0054 and original dependent claim 20).

Dependent claim 20 has been canceled. Dependent claims 43 and 44 have been amended to provide correct antecedent bases.

It is respectfully submitted that the amendments above are supported by the specification, claims, abstract of the disclosure, and drawings as originally filed, and that no new matter has been added.

Claim Rejections under 35 U.S.C. §102

The subject matter of claims 1-9 and 15-46 was rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,706,049 to Moerman (hereinafter "Moerman").

Moerman, as understood, describes a cap for a lancing device wherein the cap is designed to pressure dermal tissue and thereby facilitate expression of a fluid sample (see, for example, col. 1, line 63 through col. 2, line 6 of Moerman). Moerman teaches that such caps are formed of a flexible material that conforms to a lancing site surface and creates a pressure gradient beneath the surface (see, for example, col. 2, lines 36-41; col. 5, lines 16-20; and col. 6, lines 3-7 of Moerman).

Each of the current amended independent claims recites the presence of cap with first and second portions that approach theretogether to form a target site bulge. Although Moerman teaches the creation of a pressure gradient, there appears to be no description, teaching or suggestion in Moerman of first and second portions that approach theretogether to form a target site bulge.

The Office Action references FIG. 4B and col. 7, lines 5-16 of Moerman as describing cap portions that approach theretogether to form a bulge. However, the arrows of FIG. 4B in

Moerman depict fluid flow and not approachment theretogether of cap portions. In addition, col. 7, lines 5-16 of Moerman describe how a multi-counter surface of a contact ring is pressed (“squeezed”) into contact with dermal tissue, but does not describe, teach or suggest that any portions of the contact ring approach theretogether. Upon reading Moerman, one of skill in the art would recognize that the pressing (squeezing) described by Moerman occurs as a result of dermal tissue caught between the contact ring and bone/muscle, not approachment theretogether of portions of a cap. Moreover, and as noted above, Moerman teaches that cap flexibility is used to conform a cap to a lancing site, not to enable provide cap portions to approach theretogether.

For at least the reasons described above, Applicants respectfully submit that independent claims 1, 22, 23, 35, 37, 38, 40 and 46, as amended, are not anticipated or obvious over Moerman and are, therefore allowable. Since claims 2-9, 15-19, 21, 24-34, 36, 39 and 41-45 depend from and further limit their respective independent claims, they are allowable for at least the same reasons as their respective independent claims.

Claim Rejections under 35 U.S.C. §103

The subject matter of dependent claim 10 was rejected under 35 U.S.C. §103(a) as obvious over Moerman in view of U.S. Patent No. 6,206,841 to Cunningham et al. (hereinafter “Cunningham”). Applicants’ understanding of Moerman is summarized above with respect to the rejections under 35 U.S.C. §102(c).

Cunningham describes a glucose detector that includes a “multi-layer” element (see, for example, col. 12, lines 36-37 of Cunningham). The layers are describes as blood receiving and transporting layers, detecting layers and layers for contacting a meter (see, for example, col. 12, lines 38-46 of Cunningham). Cunningham further describes that the multi-layer element can comprise rigid layers and flexible layers (see, for example, col. 18, lines 34-41 of Cunningham).

Cunningham was cited in the Office Action for its teachings related to graded resilience. However, Applicants note that the multi-layer element described by Cunningham is not a cap for a dermal tissue lancing device but rather akin to a glucose detecting test strip (see FIGs. 11A and 11B of Cunningham). Moreover, there is no teaching or suggestion in Cunningham that any of the resilience characteristics of such a multi-layer element (test strip

element) would necessarily be useful in lancing device caps. Applicants, therefore, respectfully submit the cited combination of Moerman and Cunningham is unsupported by a close reading and Cunningham and an inappropriate unallowable combination.

Moreover, the deficiencies of Moerman were discussed above with respect to the rejection of amended claim 1 under 35 U.S.C. §102. Cunningham does not cure those deficiencies.

For at least the reasons discussed above, Applicants submit that dependent claim 10 is not obvious over the combination of Moerman and Cunningham and is, therefore, allowable.

The subject matter of dependent claim 11-14 was rejected under 35 U.S.C. §103(a) as obvious over Moerman in view of U.S. Patent No. 6,238,575 to Patil (hereinafter "Patil").

Applicants' understanding of Moerman is summarized above with respect to the rejections under 35 U.S.C. §102(e). Patil was cited by the Office Action for teachings related to use of antimicrobial materials. Applicants respectfully submit that Patil does not cure the deficiencies of Moerman described above.

As discussed above, amended independent claim 1 is neither anticipated nor obvious over Moerman. Since claims 11-14 depend from and further limit independent claim 1, they are allowable for at least the same reasons as amended claim 1.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance and applicants earnestly solicit early examination on the merits and issuance of a Notice of Allowance. Should the Examiner believe that any additional information or amendment is necessary to place the application in condition for allowance, he is urged to contact the undersigned Attorney via telephone at 408-956-4790 or facsimile number 408-956-4404.

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The Commissioner is hereby authorized to charge any required fees due in connection with this submission, including petition and extension of time fees, and to credit any overpayment to Deposit Account No. 10-0750 (Docket No. LFS5001USACIP/MM) (Johnson & Johnson).

Respectfully submitted,

/Mayumi Maeda/

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By: _____

Mayumi Maeda
Reg. No. 40,075

Johnson & Johnson
International Patent Law Division
Attn: Philip Johnson
P.O. Box 1222
New Brunswick, NJ 08903
(408) 956-4790